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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 APPELLATION TRADING COMPANY,
LLC,
12
13 Plaintiff and Counterclaim
Defendant,
14 v.
15 SALVESTRIN WINE CO., LLC,
16 Defendant and Counterclaim
17 Plaintiff.

Case No. 3:21-cv-04360-VC
**SALVESTRIN WINE CO., LLC'S
ANSWER AND COUNTERCLAIMS TO
FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF**
JURY TRIAL DEMANDED

COUNTERCLAIMS

Defendant and Counterclaim Plaintiff Salvestrin Wine Co., LLC (“Salvestrin”) hereby counterclaims and alleges against Appellation Trading Company, LLC (“ATC” or “Counterclaim Defendant”) as follows:

NATURE OF ACTION AND RELIEF SOUGHT

1. This is a civil action seeking relief for Counterclaim Defendant’s intentional and willful infringement of Salvestrin’s federally registered CULT® brand and its common law trade dress rights in its CULT product label design. The Salvestrin family has been a part of Napa Valley’s rich history of wine production for four generations. The Salvestrin Wine Co. is a small, family-owned and operated winery under the guidance of owner and operator Rich Salvestrin and his wife Shannon. They created the CULT® brand with a purpose—to provide high quality wine at an accessible price point. Salvestrin’s first bottling of its CULT® brand of wine took place on August 6, 2009 in St. Helena, California. Wine Enthusiast has rated Salvestrin’s CULT® brand of wine with a Wine Score of 90 since its first vintage was released noting in a review the “[g]reat price for a Cab this good.” For over a decade, Salvestrin has expended considerable resources promoting, advertising, and providing its wines under its CULT® brand and CULT product label design and has developed substantial goodwill and consumer recognition.

2. Counterclaim Defendant’s unauthorized use and infringement of Salvestrin’s CULT® brand and label design is demonstrated by the image below:

Salvestrin’s CULT Label



Counterclaim Defendant’s Infringing Label



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2 3. Earlier this year, Salvestrin learned that Counterclaim Defendant ATC began
3 selling a CULT brand of wines through the same retailers and at a similar price point as
4 Salvestrin's wines sold under its CULT® brand and launched the "Cult Wine Company" website
5 at the domain <www.cultwinecompany.com>. The public policy behind trademark law is to
6 protect consumers from confusion related to a product's origin, and Counterclaim Defendant's
7 unauthorized use of Salvestrin's CULT® brand is likely to mislead and misdirect consumers
8 looking for Salvestrin's wines, and to cause consumer confusion as to source, sponsorship, or
9 affiliation. Indeed, there have already been instances of confusion since entry of Counterclaim
10 Defendant's wines into Salvestrin's market—under the identical brand, at the same price point, at
11 the same retailers, using a similar label. Salvestrin was previously successful at curbing prior
12 infringing uses by Counterclaim Defendant's claimed predecessor, and now it must seek
13 intervention of the Court to stop the current infringement.

14 4. Salvestrin seeks injunctive relief to prevent Counterclaim Defendant from using its
15 CULT® label, monetary damages resulting from Counterclaim Defendant's infringing acts, and
16 transfer of the infringing domain name <www.cultwinecompany.com> to its possession.
17 Through this action, Salvestrin seeks to protect its valuable trademark and trade dress rights in its
18 CULT® brand, and to avoid confusion, mistake, or deception of its consumers.

19 **THE PARTIES**

20 5. Counterclaim Plaintiff Salvestrin Wine Co., LLC is a limited liability company
21 organized and existing under the laws of California. Its principal place of business is 397 Main
22 Street St. Helena CA, 94574.

23 6. Upon information and belief, Counterclaim Defendant Appellation Trading
24 Company, LLC is a limited liability company organized and existing under the laws of California.
25 Its principal place of business is 55-5 Enterprise Ct, Napa, CA 94558.

26 **JURISDICTION AND VENUE**

27 7. This is an action for (1) Federal Trademark Infringement under 15 U.S.C. §1114;

(2) Federal Unfair Competition under 15 U.S.C. § 1125(a)(1)(A); (3) Federal Trade Dress Infringement under 15 U.S.C. § 1125(a); (4) Unfair Competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.* and the common law of the State of California; and (5) violation of the Anti-Cybersquatting Consumer Protection Act under 15 U.S.C. § 1125(d).

8. This Court has subject matter jurisdiction over Salvestrin's claims pursuant to 15 U.S.C. §1121 (Lanham Act), 28 U.S.C. §1331 (Federal Question Jurisdiction), 28 U.S.C. §1367 (Supplemental Jurisdiction), and 28 U.S.C. §§ 1338(a)-(b) (Trademark, Copyright, and Unfair Competition).

9. This Court has personal jurisdiction over Counterclaim Defendant with regard to these counterclaims by virtue of its filing a declaratory judgment in this Court. Further Counterclaim Defendant has engaged in business activities in, and its acts and omissions pursuant to this action have taken place in, been directed to, and been committed with knowledge that the effects of such acts and omissions would affect Salvestrin and its consumers in, the state of California and in this district. Upon information and belief, Counterclaim Defendant's principal place of business is in California.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) because both Counterclaim Defendant and Salvestrin conduct business in this district, and because a substantial part of the events giving rise to this action occurred in this district.

BACKGROUND AND FACTS

Salvestrin's History and Exclusive Rights to the CULT® Trademark and Trade Dress

11. The Salvestrin family has been a part of Napa Valley's rich history of wine production for four generations. Salvestrin is a small, family-owned and operated winery situated on the historic land that has been in the Salvestrin family since 1932, first as a farm and as of 1994, as the Salvestrin Wine Co. winery under the guidance of owner and operator Rich Salvestrin and his wife Shannon. Salvestrin produces a range of wine varietals and vintages, starting with its inaugural vintage Salvestrin Cabernet Sauvignon. Salvestrin's quintessential Napa Valley wines are very well known and regarded in the industry and among its wide range of

1 consumers which include not only local Napa Valley and California Bay Area residents but also
2 customers throughout the United States.

3 12. The 2008 economic downturn hit all industries, including the wine industry, in the
4 United States hard. For Salvestrin, this meant an abundance of quality fruit and the demand for
5 more affordable quality wine. Rich and Shannon Salvestrin were able to turn the economic crisis
6 into a positive, starting a secondary brand of wines under the distinctive CULT® mark that would
7 be value-oriented, affordable, and nationally accessible, yet high in quality and delicious, like
8 Salvestrin's other more expensive and critically acclaimed vintage wines. The CULT® brand
9 debuted under Salvestrin's Saga Wines dba in 2009. The Saga Wines dba obtained the certificate
10 of label approval ("COLA") for its CULT® label on July 29, 2009, and by August 6, 2009,
11 Salvestrin had bottled the first batch of wines under the CULT® brand, a 2007 vintage.

12 13. By October of 2010, Salvestrin's CULT® brand of wine was being distributed
13 across the United States through wholesale distribution via Total Wine stores and through various
14 state distributors at an accessible price point. The CULT® label was a huge success. Since 2010,
15 the CULT® brand of wines has been continuously sold through distributors such as Total Wine
16 and Costco, reaching consumers across the country.

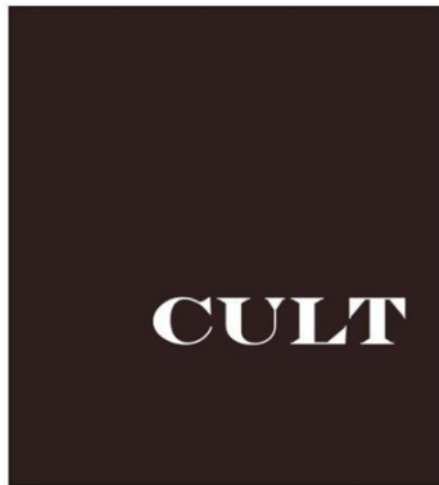
17 14. Salvestrin has expended significant resources advertising its CULT® brand of
18 wines. The CULT® brand of wines is advertised and promoted through its wholesale
19 distributors, print ads in wine journals and magazines, wine reviews, and websites. The CULT®
20 brand's dedicated website at <www.thecultwine.com>, which was registered on June 12, 2009,
21 contains information and resources about the wines, including details about the wine and recent
22 releases as well as options for purchasing the wine directly or through countless national retailers
23 carrying the CULT® branded wines. Salvestrin has received widespread industry recognition for
24 its wines and has been featured in numerous articles and reviews since its founding in 1994 and as
25 of its launch of the CULT® brand in 2009.

26 15. On June 23, 2020, Salvestrin's CULT® mark registered on the Principal Register
27 with the United States Patent and Trademark Office ("USPTO") at U.S. Registration No.

1 6,085,358. Salvestrin has also registered the marks CULT NAPA VALLEY® at U.S.
2 Registration No. 4,092,451, CULT BLUSH® at U.S. Registration No. 4,644,409, and CULT
3 BLANC® at U.S. Registration No. 4,644,410.

4 16. The CULT® brand—which is inherently distinctive—is recognized and respected
5 by ordinary consumers and wine aficionados alike as identifying Salvestrin and its high-quality
6 wines. And if deemed not inherently distinctive, in the alternative, through Salvestrin’s years of
7 use, promotion, and advertising of the mark and the associated goodwill in connection with its
8 wines, the CULT® brand has acquired distinctiveness.

9 17. Salvestrin also owns common law trade dress rights in its CULT product label
10 design (the “CULT Trade Dress”), depicted below:



21 18. The key components of the CULT Trade Dress are 1) a dark background, 2) the
22 word CULT prominently set against the dark background, 3) light colored lettering, 4) in all
23 capitals, and 5) in a serif font.

24 19. Salvestrin has been using the inherently distinctive CULT Trade Dress as part of
25 its product packaging since 2009.

26 20. Salvestrin owns common law trademark rights in the CULT Trade Dress due to
27 Salvestrin’s substantial and continuous use of the unique and distinctive CULT Trade Dress in
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1 commerce.

2 **Beau Vigne's Infringing Activities and Salvestrin's 2010 Enforcement Efforts**

3 21. Salvestrin has priority over Counterclaim Defendant based on its earlier use in
4 commerce and registration of the CULT® mark and use of the CULT label. On information and
5 belief, Counterclaim Defendant's alleged predecessor Beau Vigne, under the Snider Family,
6 began using the designation CULT in connection with Napa Valley cabernet sauvignon wines in
7 2010 after it received its COLA approval on January 14, 2010.

8 22. After learning about Beau Vigne's intended use of the CULT® mark and seeing
9 some limited uses, Salvestrin sent a letter to Beau Vigne on August 25, 2010, asserting its rights
10 in the mark and demanding that Beau Vigne stop its infringing use and any other planned uses.
11 The letter was effective. To Salvestrin it was apparent that Beau Vigne wound down its use of
12 the CULT designation: while Salvestrin initially learned that Beau Vigne had been selling wines
13 under the CULT designation in specialty stores and through retailers, shortly after Salvestrin sent
14 its letter, Beau Vigne stopped selling through retailers and only sold these wines direct to
15 consumers. Indeed, sometime in or around 2011, Salvestrin had discussions with a wine
16 distributor in Ohio that led the company to believe that the August 2010 letter resulted in Beau
17 Vigne pulling its wines bearing the CULT designation from third-party distribution. For a
18 decade, Salvestrin monitored Beau Vigne's sales, which were limited to high-priced vintage
19 bottles sold direct to consumer through the winery—selling to a very elite consumer base at over
20 double and sometimes triple or more the price of Salvestrin's accessible CULT® brand of wines.

21 23. Whatever use of CULT remained by Beau Vigne was very narrow and limited in
22 volume, geography, and consumer access. Satisfied that Beau Vigne recognized Salvestrin's
23 superior rights in the CULT® label as evidenced by Beau Vigne's wind-down and limited usage,
24 Salvestrin did not take further legal action at that time.

25 **Counterclaim Defendant's Purchase of Beau Vigne and Subsequent Infringing Activities**

26 24. In 2021, things changed. Salvestrin discovered that Beau Vigne's CULT label of
27 wines—previously priced over a hundred dollars—are now being sold at comparable prices to

1 and *via the same retailers* (including Costco) as Salvestrin's CULT® brand of wines. After
2 further investigation, Salvestrin learned that, on information and belief, Counterclaim Defendant
3 purchased all or some portion of Beau Vigne and with it Beau Vigne's CULT label. While the
4 Sniders were a local Napa Valley family making very limited use of the CULT designation, the
5 new owner, Counterclaim Defendant, has begun flooding Salvestrin's market with a new,
6 accessibly priced label of wines bearing the infringing CULT designation.

7 25. Additionally, and as depicted above, Counterclaim Defendant's label
8 incorporates a strikingly similar design to Salvestrin's CULT Trade Dress—both include plain,
9 serified font with light-colored lettering CULT prominently set on a dark background, creating a
10 likelihood of confusion with the CULT Trade Dress and further exacerbating the likelihood of
11 consumer confusion stemming from Counterclaim Defendant's use of the infringing CULT
12 designation. As a result, to the ordinary consumer, it is nearly impossible to differentiate
13 Salvestrin's wine from Counterclaim Defendant's wine when encountering these CULT labeled
14 bottles at the point of sale. The potential for confusion is further compounded given that the
15 wines are being sold at the exact same retailers.

16 26. In addition, Salvestrin learned that on November 10, 2020, a date well after
17 Salvestrin's first use of the CULT® mark, Counterclaim Defendant registered and is now using
18 the confusingly similar domain name <www.cultwinecompany.com> under the identical business
19 name "CULT Wine Company." Salvestrin is the owner of the d/b/a "Cult Wine Company"
20 which, since 2018, it has used to advertise and sell its CULT® brand of wines.

21 27. Salvestrin has never authorized nor consented to Counterclaim Defendant's use of
22 the CULT mark or the <www.cultwinecompany.com> domain name. Counterclaim Defendant,
23 thus, hosts a website at the <www.cultwinecompany.com> domain where its identical products
24 are advertised and sold under the identical brand CULT and identical business name "CULT
25 Wine Company."

26 28. Consumer confusion has already occurred since the launch of Counterclaim
27 Defendant's wines. Large scale consumer confusion is inevitable as Counterclaim Defendant's
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1 wines are now equally accessible under an identical mark as that of Salvestrin's, especially as
 2 Counterclaim Defendant continues to invest further in and flood the market with the infringing
 3 CULT designation and label.

4 29. On information and belief, Counterclaim Defendant had knowledge of Salvestrin,
 5 its CULT® mark, domain name, and CULT Trade Dress prior to adopting the CULT designation
 6 and goods incorporating the infringing label, and prior to registering the
 7 <www.cultwinecompany.com.com> domain name.

8 30. On information and belief, Counterclaim Defendant intended to divert Salvestrin's
 9 consumers by using a mark, label design, and subsequently a domain name that were confusingly
 10 similar to Salvestrin's CULT® brand and d/b/a for identical goods as well as the CULT Trade
 11 Dress, with intent to profit from its actions.

12 31. On information and belief, Counterclaim Defendant acted willfully and with
 13 knowledge of Salvestrin's exclusive rights and goodwill in the CULT® brand and CULT Trade
 14 Dress.

15 **Salvestrin's 2021 Enforcement and Counterclaim Defendant's Continued Infringement**

16 32. On February 12, 2021, Salvestrin sent a letter to Counterclaim Defendant asserting
 17 its rights in the CULT mark and demanding that Counterclaim Defendant stop its infringing
 18 activities. Salvestrin sent a subsequent letter on April 6, 2021 after receiving no response from
 19 Counterclaim Defendant. The parties conferred, and on June 8, 2021, Counterclaim Defendant
 20 filed a Complaint with the Court (later amended on June 21, 2021) requesting declaratory
 21 judgment. Salvestrin asserts these counterclaims in order to put an end to the infringing use and
 22 to protect its CULT® brand and associated goodwill and reputation.

23 33. Salvestrin's value-oriented, affordable, accessible, and high-quality wines bearing
 24 the CULT® brand and CULT Trade Dress are unique, acclaimed, appreciated, and recognized by
 25 consumers, contributing to the immense goodwill of Salvestrin's CULT® brand and CULT Trade
 26 Dress.

27 34. Consumer confusion as to the source or affiliation of the CULT® brand of wines

1 poses a substantial risk of diminishing the value and goodwill of Salvestrin's CULT® brand and
2 CULT Trade Dress.

3 35. Counterclaim Defendant's actions and conduct have been, and unless enjoined,
4 will continue to be, in violation of the Lanham Act and California State and common laws
5 governing trademark infringement, unfair competition, cybersquatting, and false advertising. As
6 a result of Counterclaim Defendant's actions, Salvestrin has suffered damages and irreparable
7 harm and continues to suffer injury, including lost revenues, loss of control over its reputation,
8 and loss of goodwill.

9 **CAUSES OF ACTION**

10 **CLAIM I – FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §1114(1))**

11 36. Salvestrin hereby realleges and incorporates herein the allegations set forth in
12 paragraphs 1 through 35 of these Counterclaims as if fully set forth herein.

13 37. Salvestrin owns U.S. Trademark Registration Nos. 6,085,358, 4,644,409,
14 4,644,410, and 4,092,451 for the marks CULT®, CULT BLUSH®, CULT BLANC®, and CULT
15 NAPA VALLEY® for wine. The registrations are valid and subsisting.

16 38. The CULT® brand was in use in commerce prior to the time Counterclaim
17 Defendant or its predecessors began the infringing uses in commerce of the identical CULT
18 designation.

19 39. Counterclaim Defendant's unauthorized use in commerce of the CULT
20 designation, and of the <www.cultwinecompany.com > domain name and "Cult Wine Company"
21 website in connection with the sale, offering for sale, promotion, or advertising of its wines,
22 despite Salvestrin's continuous and exclusive use and senior rights in its distinctive CULT®
23 brand, and without the authorization or consent of Salvestrin, is likely to cause confusion, or to
24 cause mistake, or to deceive, in violation of the Lanham Act, 15 U.S.C. § 1114.

25 40. On information and belief, Counterclaim Defendant acted with knowledge of
26 Salvestrin's exclusive rights and goodwill in the CULT® brand.

27 41. Salvestrin has suffered damages and irreparable harm as a result of Counterclaim

1 Defendant's infringement and will continue to suffer irreparable injury unless Counterclaim
 2 Defendant and its officers, agents, and employees, and all persons acting in concert with
 3 Counterclaim Defendant, are enjoined from engaging in any further such acts in violation of 32(l)
 4 of the Lanham Act, 15 U.S.C. § 1114(1).

5 **CLAIM II – FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF**
 6 **ORIGIN (15 U.S.C. §1125(a)(1)(A))**

7 42. Salvestrin hereby realleges and incorporates herein the allegations set forth in
 8 paragraphs 1 through 41 of these Counterclaims as if fully set forth herein.

9 43. Salvestrin uses the CULT® label in interstate commerce in connection with wines
 10 and has been continuously using its trademark for use products and related services from a time
 11 prior to the infringing uses by Counterclaim Defendant.

12 44. Salvestrin's CULT® brand and label is inherently distinctive. If deemed not
 13 inherently distinctive, in the alternative the CULT® brand has acquired distinctiveness.

14 45. Counterclaim Defendant's unauthorized use in commerce of the CULT label, and
 15 of the <www.cultwinecompany.com > domain name and "Cult Wine Company" website in
 16 connection with the sale, offering for sale, promotion, or advertising of its wines is likely to cause
 17 confusion, or to cause mistake, or to deceive, as to the affiliation, connection, or association of
 18 Counterclaim Defendant with Salvestrin, or as to the origin, sponsorship, or approval of
 19 Counterclaim Defendant's goods, in violation of 15 U.S.C. § 1125(a)(1)(A).

20 46. On information and belief, Counterclaim Defendant acted with knowledge of
 21 Salvestrin's exclusive rights and goodwill in the CULT® brand.

22 47. Salvestrin has suffered damages and irreparable harm as a result of Counterclaim
 23 Defendant's infringement and will continue to suffer irreparable injury unless Counterclaim
 24 Defendant and its officers, agents, and employees, and all persons acting in concert with
 25 Counterclaim Defendant, are enjoined from engaging in any further such acts in violation of 15
 26 U.S.C. §1125(a)(1)(A).

CLAIM III – FEDERAL TRADE DRESS INFRINGEMENT

(15 U.S.C. §1125(a))

48. Salvestrin hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 47 of these Counterclaims as if fully set forth herein.

49. Counterclaim Defendant has unlawfully copied and misappropriated the inherently distinctive CULT Trade Dress by using confusingly similar imagery on its product label that copies the key elements and overall look and feel of the CULT Trade Dress. Specifically, Counterclaim Defendant's product label consists of 1) a dark background, 2) the word CULT prominently set against the dark background, 3) light colored lettering, 4) in all capitals, and 5) in a serif font.

50. Counterclaim Defendant's use of the CULT Trade Dress in connection with the sale, offering for sale, promotion, or advertising of its wines is likely to cause confusion, or to cause mistake, or to deceive, as to the affiliation, connection, or association of Counterclaim Defendant with Salvestrin, or as to the origin, sponsorship, or approval of Counterclaim Defendant's goods, in violation of 15 U.S.C. § 1125(a).

51. On information and belief, Counterclaim Defendant acted with knowledge of Salvestrin's exclusive rights and goodwill in the CULT Trade Dress.

52. Salvestrin has suffered damages and irreparable harm as a result of Counterclaim Defendant's infringement and will continue to suffer irreparable injury unless Counterclaim Defendant and its officers, agents, and employees, and all persons acting in concert with Counterclaim Defendant, are enjoined from engaging in any further such acts in violation of 15 U.S.C. §1125(a).

CLAIM IV – CALIFORNIA STATE UNFAIR COMPETITION

(Cal. Bus. & Prof. Code §§ 17200 , *et seq.*, and Cal. Common Law)

53. Salvestrin hereby realleges and incorporates herein the allegations set forth in paragraphs 1 through 52 of these Counterclaims as if fully set forth herein.

54. The acts described above constitute unfair competition in violation of Cal. Bus. &

1 Prof. Code §§ 17200 *et seq.* and the common law of the State of California.

2 55. Upon information and belief, Counterclaim Defendant's conduct is willful,
3 deliberate, and intentional.

4 56. Salvestrin has suffered damages and irreparable harm as a result of Counterclaim
5 Defendant's unfair competition and will continue to suffer irreparable injury unless Counterclaim
6 Defendant and its officers, agents, and employees, and all persons acting in concert with
7 Counterclaim Defendant, are enjoined from engaging in any further such acts Cal. Bus. & Prof.
8 Code § 17200 *et seq.* and the common law of the State of California.

9 **CLAIM V – VIOLATION OF THE ANTI CYBERSQUATTING CONSUMER**
10 **PROTECTION ACT (15 U.S.C. §1125(d))**

11 57. Salvestrin hereby realleges and incorporates herein the allegations set forth in
12 paragraphs 1 through 56 of these Counterclaims as if fully set forth herein.

13 58. Counterclaim Defendant has registered and used the Internet domain name
14 <www.cultwinecompany.com >, which is confusingly similar to Salvestrin's CULT® mark.

15 59. Counterclaim Defendant did not register or use this domain name in connection
16 with the *bona fide* offering of any goods or services before Salvestrin developed enforceable
17 rights in its CULT® mark or before Salvestrin registered <www.thecultwine.com> or the "Cult
18 Wine Company" d/b/a.

19 60. Counterclaim Defendant does not make *bona fide* noncommercial or fair use of
20 Salvestrin's CULT® mark on its website hosted at <www.cultwinecompany.com>.

21 61. On information and belief, Counterclaim Defendant had knowledge of Salvestrin
22 and its CULT® mark and intended to divert consumers from Salvestrin's
23 <www.thecultwine.com> website by creating a likelihood of confusion as to the source,
24 sponsorship, affiliation, or endorsement of Counterclaim Defendant's website. Counterclaim
25 Defendant's acts were for commercial gain and harmed the goodwill represented by Salvestrin's
26 CULT® brand.

27 62. Counterclaim Defendant's acts described above demonstrate bad faith intent to

1 profit from Salvestrin's CULT® mark and violate the federal Anti Cybersquatting Consumer
2 Protection Act, 15 U.S.C. §1125(d).

3 63. As a consequence, Salvestrin is entitled to an injunction, Counterclaim
4 Defendant's profits, Salvestrin's damages, statutory damages, and costs of action. Moreover,
5 because this is an exceptional case, Salvestrin is entitled to recover treble damages, treble profits,
6 and attorneys' fees against Counterclaim Defendant.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Counterclaim Plaintiff Salvestrin Wine Co., LLC prays for the following
9 relief:

10 a) Entry of judgment in favor of Salvestrin and against Counterclaim Defendant on
11 all claims.

12 b) Temporary and permanent enjoinder of Counterclaim Defendant from directly or
13 indirectly engaging in any further trademark and trade dress infringement or unfair competition
14 against Salvestrin, and from aiding, abetting, encouraging, or inducing others to do so.

15 c) Direction to Counterclaim Defendant to file with this Court and serve upon
16 Salvestrin within thirty (30) days after service upon Counterclaim Defendant of any injunction
17 herein, a report in writing and under oath setting forth in detail the manner and form in which
18 Counterclaim Defendant has complied with the injunction.

19 d) Order of an accounting and order Counterclaim Defendant to pay over to
20 Salvestrin:

21 i. All monetary gains, profits, and advantages derived by Counterclaim
22 Defendant from the acts complained of herein;

23 ii. Damages incurred by Salvestrin;

24 iii. Statutory damages for violation of 15 U.S.C. §1125(D)(1) in the amount of
25 \$100,000 per infringing domain name;

26 iv. Treble damages as provided by law;

27 v. Punitive and exemplary damages as provided by law and to be determined by
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1 the Court after a full hearing on the merits; and

2 vi. Salvestrin's costs and disbursements in this action, including reasonable
3 attorneys' fees and prejudgment and post-judgment interest, and pursuant to 15
4 U.S.C. § 1117(a) and the laws of the State of California.

5 e) Order that Counterclaim Defendant transfer ownership of the domain name
6 <www.cultwinecompany.com> to Salvestrin.

7 f) Order that Counterclaim Defendant, and all other persons in privity or acting in
8 concert with Counterclaim Defendant, take affirmative steps to dispel any actual confusion that
9 heretofore has been created by the trademark and trade dress infringement described above.

10 g) Declare this case to be exceptional.

11 h) Award to Salvestrin any other or further relief that the Court deems just or
12 appropriate.

13 **JURY TRIAL DEMANDED**

14 Salvestrin demands a trial by jury of all issues so triable.
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ANSWER TO FIRST AMENDED COMPLAINT

Defendant Salvestrin Wine Co., LLC (“Salvestrin”) hereby sets forth its answer and affirmative defenses to Plaintiff Appellation Trading Company, LLC’s (“Plaintiff”) First Amended Complaint (ECF No. 12). The numbered paragraphs in the Answer portion of this pleading correspond to the numbered paragraphs of Plaintiff’s First Amended Complaint. Certain headings used by Plaintiff are restated for ease of reference, but no admissions are made thereby as the headings are not allegations requiring an answer. Salvestrin denies all allegations it does not expressly admit.

JURISDICTION AND VENUE

1. Admitted that this Court has subject matter jurisdiction pursuant to the cited statutory provisions; admitted that this Court has personal jurisdiction over both parties; admitted that venue is proper in this District. To the extent this paragraph contains further allegations that require a response, those allegations are denied.

THE PARTIES

2. [Intentionally left blank as the First Amended Complaint does not contain a Paragraph 2].

3. Salvestrin lacks knowledge or information sufficient to form a belief about the truth of the allegations and on that basis denies them.

4. Admitted that Salvestrin Wine Co., LLC is a California entity and has a principal place of business in St. Helena, California, but denied that it is a limited liability corporation. Admitted that Salvestrin is in the business of producing and distributing wines in the United States and in California, including in this District. To the extent this paragraph contains further allegations that require a response, those allegations are denied.

FACTUAL BACKGROUND

5. Denied that the term “Cult” was first used as a brand name on a Napa Valley wine in or about 2010 by the Snider family d/b/a Beau Vigne. Salvestrin was the first to use CULT as a brand name for wine in 2009 and has used it continuously since that time. Salvestrin lacks

1 knowledge or information sufficient to form a belief about the truth of the remaining allegations
2 and on that basis denies them.

3 6. Admitted that Salvestrin began using its CULT® mark in connection with wines
4 but denied as to the date. Admitted that Salvestrin sent a letter to the Snider family but denied to
5 the extent the allegations imply the letter had no effect. Salvestrin denies the remaining
6 allegations in this paragraph.

7 7. Salvestrin lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations and on that basis denies them.

9 8. [Erroneously numbered “6” in the First Amended Complaint]. Admitted that in
10 February 2021, Salvestrin’s trademark counsel sent a cease and desist letter to ATC’s counsel
11 regarding its use of the “Cult” brand name on wine based on, *inter alia*, Salvestrin’s prior rights.
12 Salvestrin denies the remaining allegations in this paragraph.

13 9. [Erroneously numbered “7” in the First Amended Complaint]. Admitted that
14 undersigned counsel sent a second letter to ATC’s counsel. Denied that Salvestrin received
15 ATC’s alleged letter before sending its second letter, because ATC’s counsel sent it to an
16 erroneous email address. Salvestrin denies the remaining allegations in this paragraph.

17 10. [Erroneously numbered “8” in the First Amended Complaint]. Denied.

18 11. [Erroneously numbered “9” in the First Amended Complaint]. To the extent the
19 allegations in this paragraph purport to be legal conclusions, no response is required. To the
20 extent the allegations in this paragraph purport to extend to Salvestrin’s CULT® brand, they are
21 denied.

22 12. [Erroneously numbered “10” in the First Amended Complaint]. Denied.

23 13. [Erroneously numbered “11” in the First Amended Complaint]. Admitted that
24 Salvestrin has used the brand name CULT for many years. Salvestrin denies the remaining
25 allegations in this paragraph.

26 14. [Erroneously numbered “12” in the First Amended Complaint]. Admitted that
27 Salvestrin received a federal registration for its CULT mark in 2020. Salvestrin denies the

1 remaining allegations in this paragraph.

2 15. [Erroneously numbered “13” in the First Amended Complaint]. Denied as to the
3 date Salvestrin received its Certificate of Label Approval (“COLA”); Salvestrin received its
4 COLA for its CULT® label on July 29, 2009. Salvestrin denies the remaining allegations in this
5 paragraph.

6 **FIRST CLAIM FOR RELIEF**

7 **(REQUEST FOR DECLARATORY RELIEF)**

8 16. [Erroneously numbered “14” in the First Amended Complaint]. Salvestrin
9 incorporates by reference the responses in the preceding paragraphs as if fully set forth herein.

10 17. [Erroneously numbered “15” in the First Amended Complaint]. To the extent the
11 allegations in this paragraph purport to be legal conclusions, no response is required. Admitted
12 that an actual controversy exists between ATC and Salvestrin as to ATC’s unauthorized use of
13 Salvestrin’s CULT® trademark.

14 18. [Erroneously numbered “16” in the First Amended Complaint]. Admitted.

15 19. [Erroneously numbered “17” in the First Amended Complaint]. Admitted that the
16 Complaint states that ATC purports to make certain assertions. To the extent this paragraph
17 contains further allegations that require a response, those allegations are denied.

18 20. [Erroneously numbered “18” in the First Amended Complaint]. The allegations in
19 this paragraph are legal conclusions to which no response is required.

20 **[PRAYER FOR RELIEF]**

21 21. In response to the paragraphs of the prayer for relief, Salvestrin denies that
22 Plaintiff is entitled to any relief whatsoever against Salvestrin in this action, either as prayed for
23 in paragraphs 1-2 of Plaintiff’s prayer for relief or otherwise.

24 **SALVESTRIN’S AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 No Damages to Plaintiff

27 22. ATC is barred from relief in this action because it has suffered no damages or

1 legally cognizable harm.

2 **SECOND AFFIRMATIVE DEFENSE**

3 Unclean Hands

4 23. ATC is barred from relief in this action under the doctrine of unclean hands.

5 **THIRD AFFIRMATIVE DEFENSE**

6 Bad Faith

7 24. ATC is barred from relief in this action because of its own lack of good faith.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 Other Affirmative Defenses

10 25. Salvestrin further reserves the right to amend to include other affirmative defenses
11 that it may learn of during this litigation by way of discovery of additional evidence or otherwise.
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2 Dated: July 1, 2021

DIANA M. RUTOWSKI
Orrick, Herrington & Sutcliffe LLP

3
4 By: /s/ Diana M. Rutowski
5 DIANA M. RUTOWSKI
6 Attorneys for Defendant
7 SALVESTRIN WINE CO., LLC
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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

Dated: July 1, 2021

/s/ Diana M. Rutowski
Diana M. Rutowski